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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JASON KHALILI, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

LINDT & SPRUNGLI (NORTH
AMERICA) INC., LINDT & SPRUNGLI
(USA) INC.,

Defendants.

Case No.:

CLASS ACTION COMPLAINT

1. VIOLATION OF UNFAIR
COMPETITION LAW (CAL.
BUS. & PROF. CODE §§
17200, *et seq.*)
2. VIOLATION OF FALSE
ADVERTISING LAW (CAL.
BUS. & PROF. CODE §§
17500, *et seq.*)
3. VIOLATION OF
CONSUMERS LEGAL
REMEDIES ACT (CAL. CIV.
CODE §§ 1750, *et seq.*)
4. BREACH OF IMPLIED
WARRANTY
5. UNJUST ENRICHMENT
6. NEGLIGENT FAILURE TO
WARN

JURY TRIAL DEMANDED

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Plaintiff Jason Khalili (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, brings this class action complaint against Defendants Lindt & Sprungli (North America) Inc. and Lindt & Sprungli (USA) Inc. (“Defendants” or “Lindt”). Plaintiff’s allegations are based upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters based on investigation conducted by and through Plaintiff’s attorneys. Plaintiff believes that substantial additional evidentiary support exists for the allegations set forth herein, after a reasonable opportunity for discovery.

INTRODUCTION

1. **Synopsis.** Compared to other types of chocolate, dark chocolate is considered a healthier chocolate that is rich in antioxidants and other beneficial compounds. Consumers who purchase and consume dark chocolate therefore believe they are benefiting their health. However, a recent study determined that certain dark chocolate products, including Defendants’ Lindt Excellence Dark Chocolate 70% and Lindt Excellence Dark Chocolate 85%, contain alarming levels of dangerous heavy metals that pose serious health risks to consumers. The study found that just one ounce of Defendants’ Lindt Excellence Dark Chocolate 70% Cocoa contains a staggering 116% of California’s daily maximum allowable dose level (MADL) for cadmium and 48% of the MADL for lead.¹ The study also found that just one ounce of Defendants’ Lindt Excellence Dark Chocolate 85% Cocoa contains an alarming 166% of the MADL for lead and 80% of the MADL for cadmium. *Id.* Lead and cadmium are toxic heavy metals that are unsafe for consumption because they can cause various health issues in adults and children. Yet, to increase its profits and gain an unfair advantage over its competitors, Defendants sell the Products without disclosing the heavy metal content contained therein, leading reasonable consumers, including Plaintiff, to

¹ “Lead and Cadmium Could Be in Your Dark Chocolate” (Dec. 15, 2022), Consumer Reports, <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/>.

1 believe the Products are safe for consumption when they are not. Fair and accurate
 2 depictions of the labels and packaging for Defendants' Lindt Excellence Dark
 3 Chocolate 70% Cocoa and Lindt Excellence Dark Chocolate 85% Cocoa are depicted
 4 below as "**Exhibit 1**" and "**Exhibit 2.**"

5 **Exhibit 1.** Lindt Excellence Dark Chocolate 70% Cocoa



Exhibit 2. Lindt Excellence Dark Chocolate 85% Cocoa



1 2. **The Product(s).** The Products at issue include the Lindt Excellence Dark
2 Chocolate 70% Cocoa, Lindt Excellence Dark Chocolate 85% Cocoa, and all other
3 substantially similar dark chocolate products manufactured or sold by Defendants to
4 consumers in the United States that materially omit the contents of lead and cadmium
5 therein.

6 3. **The Deception.** Defendants have misled reasonable consumers,
7 including Plaintiff, into believing the Products are safe for consumption when they
8 are not. A December 2022 Consumer Reports study measured the amount of heavy
9 metals in dark chocolates, including the Products, against California’s daily MADL
10 for lead (0.5 micrograms) and cadmium (4.1 micrograms). *Id.* The study found that
11 Defendants’ Products “contain cadmium and lead—two heavy metals linked to a host
12 of health problems in children and adults,” in amounts such that “eating just an ounce
13 a day would put an adult over a level that public health authorities and Consumer
14 Reports’ experts say may be harmful...” *Id.* The study also found that just an ounce
15 of Defendants’ Lindt Excellence Dark Chocolate 70% Cocoa contained a staggering
16 amount of cadmium, measuring at 116% of California’s MADL for cadmium, and a
17 significant amount of lead, measuring at 48% of the MADL for lead. *Id.* Defendants’
18 Lindt Excellence Dark Chocolate 85% Cocoa was also found to contain concerning
19 levels of these heavy metals, with just an ounce measuring at a shocking 166% of
20 California’s MADL for lead and an alarming 80% of the MADL for cadmium. *Id.*
21 Both Defendants’ Lindt Excellence Dark Chocolate 70% Cocoa and Lindt Excellence
22 Dark Chocolate 85% Cocoa contain 3.5 ounces of chocolate per bar (*See Exhibits 1*
23 *and 2, supra*). Exposure to lead and cadmium can have detrimental effects on humans.
24 Lead and cadmium can accumulate in the body over time and cause a range of health
25 issues, including developmental toxicity, male reproductive toxicity, and female
26
27
28

1 reproductive toxicity.² Frequent, long-term exposure to even small amounts of heavy
 2 metals can also lead to “nervous system problems, hypertension, immune system
 3 suppression, kidney damage, and reproductive issues.”³ Defendants’ failure to
 4 disclose its Products’ alarming lead and cadmium content places consumers in
 5 jeopardy of developing illnesses.

6 **4. Duty to Disclose and Materiality of Material Omission.** Defendants
 7 had a duty to warn consumers about the risks associated with consuming its Products,
 8 because Defendants knew or should have known that its Products contain heavy
 9 metals toxic to humans. Defendants’ failure to disclose the heavy metal content in its
 10 Products is a material omission because the information is relevant to consumers’
 11 decision-making process. Lead and cadmium are known to have adverse effects on
 12 humans, and this information could influence consumers’ decisions to purchase the
 13 Products. Plaintiff and other consumers like him would not have purchased the
 14 Products had they known the Products contained harmful lead and cadmium.

15 **5. Primary Dual Objectives.** Plaintiff brings this action individually and in
 16 a representative capacity on behalf of those similarly situated consumers who
 17 purchased the Products during the relevant Class Period (Class and/or Subclass
 18 defined *infra*), for dual primary objectives: **One**, Plaintiff seeks, on his behalf and on
 19 behalf of the Class/Subclass, injunctive relief to stop Defendants’ unlawful
 20 manufacture, marketing, and sale of the Products with the material omission in order
 21 to avoid or mitigate the risk of deceiving the public into believing the Products are
 22 safe for consumption, by requiring that Defendants change its business practices,

24 ² California Office of Environmental Health Hazard Assessments, *Lead and Lead*
 25 *Compounds*, OEHHA, [https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-](https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds)
 26 [compounds](https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds); California Office of Environmental Health Hazard Assessments,
 27 *Cadmium*, OEHHA, <https://oehha.ca.gov/proposition-65/chemicals/cadmium>.

28 ³ “Lead and Cadmium Could Be in Your Dark Chocolate” (Dec. 15, 2022),
 Consumer Reports, [https://www.consumerreports.org/health/food-safety/lead-and-](https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/)
[cadmium-in-dark-chocolate-a8480295550/](https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/).

1 which may include one or more of the following: inclusion of a disclaimer on the
 2 Products' labels and/or packaging, modification of the Products' formulation be it a
 3 change in ingredients or their sourcing and manufacturing processes, and/or
 4 discontinuance of the Products' manufacture, marketing, and/or sale. **Two**, Plaintiff
 5 seeks, on Plaintiff's behalf and on behalf of the Class/Subclass, a monetary recovery
 6 of the full price that Plaintiff and consumers paid for the Products, which should have
 7 disclosed the heavy metal content in them, as consistent with permissible law
 8 (including, for example, damages, restitution, disgorgement, and any applicable
 9 penalties/punitive damages solely as to those causes of action so permitted).

10 **JURISDICTION**

11 6. This Court has subject matter jurisdiction over this action pursuant to the
 12 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because (i) there are 100 or
 13 more class members, (ii) there is an aggregate amount in controversy exceeding
 14 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because
 15 at least one plaintiff and defendant are citizens of different states. This Court also has
 16 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

17 **VENUE**

18 7. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action
 19 because a substantial part of the events, omissions, and acts giving rise to the claims
 20 herein occurred in this District. Plaintiff is a citizen of California, resides in this
 21 District, and purchased the Products within this District. Moreover, Defendants
 22 receive substantial compensation from sales in this District, and Defendants' material
 23 omissions had a substantial effect in this District.

24 **PARTIES**

25 8. **Plaintiff Khalili.** The following is alleged based upon personal
 26 knowledge:

27 a. **Residence.** Plaintiff is a resident of California.

28 b. **Purchase Details.** Plaintiff purchased Defendants' Lindt Excellence

1 Dark Chocolate 70% Cocoa and Lindt Excellence Dark Chocolate
 2 85% Cocoa for approximately \$4 each at a Rite Aid store in Los
 3 Angeles County, California, in or around Winter 2022.

4 c. **Reliance on Material Omission.** In making his purchase, Plaintiff
 5 relied upon the Products' labeling, packaging, and advertising.
 6 Plaintiff believed the Products could be safely consumed because the
 7 Products did not contain any warning or disclosure about the lead and
 8 cadmium content therein.

9 d. **No Actual Knowledge of Falsity.** At the time of purchase, Plaintiff
 10 did not know the Products contained lead or cadmium and that they
 11 were unsafe for consumption.

12 e. **No Warning.** Plaintiff did not see any disclaimer, qualifier, or other
 13 explanatory statement or information on the Products' labels or
 14 packaging that suggested that the Products contained lead and
 15 cadmium or that they were not safe for consumption. Defendants had
 16 exclusive knowledge of this information but nevertheless failed to
 17 inform consumers.

18 f. **Causation/Damages.** Plaintiff would not have purchased the Products
 19 if the heavy metal content contained in them had been disclosed, and
 20 had Plaintiff known that the Products were not safe for consumption.

21 g. **Desire to Repurchase.** Plaintiff continues to see the Products
 22 available for sale and desires to purchase them again if he could be
 23 sure about the contents of the Products.

24 h. **Lack of Personal Knowledge/Expertise to Determine Truth.**
 25 Plaintiff is not personally familiar with the science behind the Products
 26 as he does not possess any specialized knowledge, skill, experience,
 27 or education in chocolate products, similar to and including the
 28 Products, and he has no way of determining whether the Products

1 contain heavy metals.

2 i. **Inability to Rely.** Plaintiff is, and continues to be, unable to rely on
3 the Products' true contents.

4 9. **Plaintiff's Future Harm.** Defendants continue to market and sell the
5 Products without disclosing the heavy metals contained in them. Plaintiff wants to
6 purchase the Products in the future if he could be sure about the contents in the
7 Products. However, Plaintiff is an average consumer who is not sophisticated in, for
8 example, dark chocolate products, similar to and including the Products, and he
9 cannot determine if harmful heavy metals, such as lead and cadmium, are present in
10 Defendants' Products. Since Plaintiff would like to purchase the Products again—
11 despite the fact that the Products currently fail to disclose the heavy metals contained
12 in them—Plaintiff would likely and reasonably, but incorrectly, assume the Products
13 are safe for consumption if no appropriate warning is placed on the Products' labels.
14 Accordingly, Plaintiff is at risk of reasonably, but incorrectly, assuming
15 that Defendants have fixed the Products such that Plaintiff may buy them again,
16 believing they no longer contain harmful heavy metals. In this regard, Plaintiff is
17 currently and, in the future, deprived of the ability to rely on the Products' labeling
18 and packaging.

19 10. **Defendants Lindt & Sprungli (North America) Inc. and Lindt &**
20 **Sprungli (USA) Inc.** Defendants are corporations headquartered in Kansas City,
21 Missouri, and Stratham, New Hampshire, respectively. Defendants were doing
22 business in the State of California at all relevant times, including the Class Period.
23 Directly and through its agents, Defendants have substantial contacts with and receive
24 substantial benefits and income from and through the State of California, as well as
25 the United States of America. Defendants are owners, manufacturers, and/or
26 distributors of the Products, and created and/or authorized the labeling to market the
27 Products. Defendants and its agents promoted, marketed, and sold the Products at
28 issue throughout the United States and, in particular, within this state and judicial

1 district. The unfair, unlawful, deceptive, and misleading labeling on the Products was
 2 prepared, authorized, ratified, and/or approved by Defendants and its agents to
 3 deceive and mislead consumers in the State of California and the United States into
 4 purchasing the Products. Additionally, Defendants knew about the heavy metal
 5 content in the Products but failed to disclose that information to consumers. The
 6 information was material, and Defendants had a duty to disclose the information,
 7 because the information could influence a consumer's purchasing decision, and it
 8 therefore created an unreasonable safety risk to consumers.

9 **FACTUAL ALLEGATIONS**

10 **A. Background**

11 11. **History of Chocolate.** Chocolate is derived from *Theobroma cacao*, also
 12 known as the cacao tree or cocoa tree.⁴ The cacao/cocoa tree is native to Central and
 13 South America and grows upwards to 30 feet.⁵ It produces a pod-like fruit which
 14 contains about 40 to 50 beans once matured.⁶ All forms of chocolates are derived
 15 from cacao beans. To create chocolate, the cacao beans are separated from the pod
 16 and the pulp within the pod.⁷ The beans are then fermented, dried, and roasted.⁸ The

19
 20 ⁴ "Theobroma cacao L. (Malvaceae)," UNIVERSITY OF OXFORD,
 21 [https://herbaria.plants.ox.ac.uk/bol/plants400/Profiles/ST/Theo#:~:text=Theobroma%20cacao%20is%20the%20Latin, his%20Species%20Plantarum%20\(1753\).](https://herbaria.plants.ox.ac.uk/bol/plants400/Profiles/ST/Theo#:~:text=Theobroma%20cacao%20is%20the%20Latin, his%20Species%20Plantarum%20(1753).)

22 ⁵ "Theobroma cacao," MISSOURI BOTANICAL GARDEN,
 23 <https://www.missouribotanicalgarden.org/PlantFinder/PlantFinderDetails.aspx?taxonid=287263>.

24 ⁶ Frank Robles, "About The Cacao Tree," CHOCOLATE,
 25 <https://www.chocolate.org/blogs/chocolate-blog/about-the-cacao-tree>.

26 ⁷ "Harvesting & Post-harvest processing," ICCO Secretariat
 27 INTERNATIONAL COCOA ORGANIZATION, <https://www.icco.org/harvesting-post-harvest-new/>.

28 ⁸ Veronika Barišić, et al., "The Chemistry behind Chocolate Production," NATIONAL
 LIBRARY OF MEDICINE, (Aug. 30, 2019),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6749277/>.

1 roasted beans are next crushed, allowing for the removal of their outer hulls.⁹ The
 2 nibs that remain are ground to form a paste-like chocolate liquor. *Id.* This chocolate
 3 liquor is the starting point of all chocolate products. *Id.* It is mixed with other
 4 ingredients, including sugar, milk, additional cacao fat or butter (cacao beans contain
 5 cacao fat/butter), and various spices, which, when blended with emulsifiers, create
 6 the final chocolate product consumers purchase. *Id.*

7 12. Chocolate's popularity made chocolate a commodity. The industrial
 8 revolution allowed companies like Cadbury, Nestle and Hershey to mass-produce
 9 chocolate products.¹⁰ Mass-production resulted in lower prices, meaning greater
 10 percentages of the population began enjoying chocolate products. *Id.* Today chocolate
 11 is a \$130 billion global industry, and Americans spend roughly \$22 billion a year on
 12 chocolate products.¹¹

13 13. On average, each American consumes nearly twelve pounds of chocolate
 14 per year.¹² This appetite for chocolate is warranted. Not only is chocolate tasty, but

15 _____
 16 ⁹ "How is Chocolate Made?" SCIENCE OF COOKING,
 17 [https://www.scienceofcooking.com/chocolate/how-is-chocolate-](https://www.scienceofcooking.com/chocolate/how-is-chocolate-made.htm#:~:text=GRINDING%20OF%20NIB,flows%20out%20in%20liquid%20form.)
 18 [made.htm#:~:text=GRINDING%20OF%20NIB,flows%20out%20in%20liquid%20form.](https://www.scienceofcooking.com/chocolate/how-is-chocolate-made.htm#:~:text=GRINDING%20OF%20NIB,flows%20out%20in%20liquid%20form.)

19 ¹⁰ "More Chocolate, More Quickly!: Changes in Chocolate Consumption brought
 20 about by the Industrial Revolution," WORD PRESS, (Mar. 24, 2020),
 21 [https://chocolateclass.wordpress.com/2020/03/24/more-chocolate-more-quickly-](https://chocolateclass.wordpress.com/2020/03/24/more-chocolate-more-quickly-changes-in-chocolate-consumption-brought-about-by-the-industrial-revolution/)
 22 [changes-in-chocolate-consumption-brought-about-by-the-industrial-revolution/](https://chocolateclass.wordpress.com/2020/03/24/more-chocolate-more-quickly-changes-in-chocolate-consumption-brought-about-by-the-industrial-revolution/).

23 ¹¹ Govind Bhutada, "Cocoa's bittersweet supply chain in one visualization," WORLD
 24 ECONOMIC FORUM, (Nov. 4, 2020),
 25 [https://www.weforum.org/agenda/2020/11/cocoa-chocolate-supply-chain-business-](https://www.weforum.org/agenda/2020/11/cocoa-chocolate-supply-chain-business-bar-africa-exports/)
 26 [bar-africa-exports/](https://www.weforum.org/agenda/2020/11/cocoa-chocolate-supply-chain-business-bar-africa-exports/); Linda Searing, "The Big Number: \$22 billion a year on
 27 chocolate. Is that healthy?" THE WASHINGTON POST, (Feb. 10, 2018),
 28 [https://www.washingtonpost.com/national/health-science/the-big-number22-billion-](https://www.washingtonpost.com/national/health-science/the-big-number22-billion-a-year-on-chocolate-is-that-healthy/2018/02/09/6a6cee4c-0d1a-11e8-8890-372e2047c935_story.html)
[a-year-on-chocolate-is-that-healthy/2018/02/09/6a6cee4c-0d1a-11e8-8890-](https://www.washingtonpost.com/national/health-science/the-big-number22-billion-a-year-on-chocolate-is-that-healthy/2018/02/09/6a6cee4c-0d1a-11e8-8890-372e2047c935_story.html)
[372e2047c935_story.html](https://www.washingtonpost.com/national/health-science/the-big-number22-billion-a-year-on-chocolate-is-that-healthy/2018/02/09/6a6cee4c-0d1a-11e8-8890-372e2047c935_story.html).

¹² Linda Searing, "The Big Number: \$22 billion a year on chocolate. Is that
 healthy?" THE WASHINGTON POST, (Feb. 10, 2018),
[https://www.washingtonpost.com/national/health-science/the-big-number22-billion-](https://www.washingtonpost.com/national/health-science/the-big-number22-billion-a-year-on-chocolate-is-that-healthy/2018/02/09/6a6cee4c-0d1a-11e8-8890-372e2047c935_story.html)

studies show that it has positive physical effects on humans, which is why the product has been sought after for thousands of years.¹³ Chemicals in chocolate have been shown to trigger euphoria, the same endorphins that trigger the “in love” feeling in humans, which is why chocolate is unsurprisingly the go-to Valentine’s Day gift.¹⁴ In surveys measuring flavors, chocolate consistently remains the favorite.¹⁵ Chocolate’s ability to increase alertness and energy is well-documented, which is why chocolate has been standard issue to U.S. servicemen since George Washington.¹⁶ The effects of chocolate are so well-known, it has been an integral part of the cultural psyche since the Aztecs.¹⁷ Even modern examples like the 1971 film *Willy Wonka & the Chocolate Factory* and the 2000 film *Chocolate* reference chocolate’s cultural impact. Diners would be hard-pressed to see a dessert menu that did not contain at least one chocolate dessert.

14. Health Benefits of Dark Chocolate. Dark chocolate has been widely considered to be the healthier option among other chocolate types. This is because dark chocolate contains high concentrations of cocoa flavonoids, which are potent antioxidants. Among its many benefits, dark chocolate is known to positively affect

[a-year-on-chocolate-is-that-healthy/2018/02/09/6a6cee4c-0d1a-11e8-8890-372e2047c935_story.html](https://www.foxnews.com/health/chocolate-the-love-drug-and-why-its-good-for-you).

¹³ Donatella Lippi, “Chocolate in History: Food, Medicine, Medi-Food,” NATIONAL LIBRARY OF MEDICINE, (May 5, 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3708337/>.

¹⁴ *Id.*; Chris Kilham, “Chocolate: The Love Drug. . .And Why It’s Good for You.” FOX NEWS, (Oct. 23, 2015), <https://www.foxnews.com/health/chocolate-the-love-drug-and-why-its-good-for-you>.

¹⁵ “Chocolate is America’s favorite ice cream flavor, survey says,” CBS MINNESOTA, (July 15, 2022) <https://www.cbsnews.com/minnesota/news/america-favorite-ice-cream-flavor-chocolate/>.

¹⁶ Sean Jacobson, “Chocolate is a Fighting Food! – Chocolate bars in the Second World War,” NATIONAL MUSEUM OF AMERICAN HISTORY, (Oct. 24, 2016), <https://americanhistory.si.edu/blog/chocolate-bars-second-world-war>.

¹⁷ “The Development of Chocolate,” WORLD PRESS, (Mar. 15, 2019), <https://chocolateclass.wordpress.com/2019/03/15/the-development-of-chocolate/>.

heart health. Studies have shown that dark chocolate has the potential to reduce the risk of heart disease because it can help improve blood flow and lower blood pressure.¹⁸ Dark chocolate can also have positive effects on cognitive function. One study found that consuming cocoa flavonoids can help improve memory and attention, especially among elderly participants with mild cognitive impairments. *Id.* Other studies have suggested that dark chocolate can have anti-inflammatory properties which can help reduce the risk of chronic diseases such as diabetes and cancer.¹⁹ While other studies have found that the flavonoids in dark chocolate can improve mood and lower symptoms of anxiety and depression.²⁰

15. **Consumer Demand for Dark Chocolate.** For consumers, dark chocolate has become increasingly popular and sought after because of its perceived health benefits.²¹ The cacao bean is one of the best-known sources of dietary polyphenols, constituting approximately 10% of a whole bean's dry weight.²² The antioxidant properties of polyphenols are known to have positive effects on the cardiovascular

¹⁸ "The Neuroprotective Effects of Cocoa Flavanol and its Influence on Cognitive Performance," National Library of Medicine (Feb. 5, 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3575938/>.

¹⁹ "The Effects of Cocoa on the Immune System," National Library of Medicine (June 4, 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3671179/>.

²⁰ "The Neuroprotective Effects of Cocoa Flavanol and its Influence on Cognitive Performance," National Library of Medicine (Feb. 5, 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3575938/>.

²¹ "United States Chocolate Market – Growth, Trends, Covid-19 Impact, and Forecasts (2023-2028)" Mordor Intelligence, <https://www.mordorintelligence.com/industry-reports/united-states-chocolate-market>; "Phenolic and Theobromine Contents of Commercial Dark, Milk and White Chocolates on the Malaysian Market" (Jan. 14, 2009), National Library of Medicine, <https://ncbi.nlm.nih.gov/pmc/articles/PMC6254055/>.

²² "Chocolate, 'Food of the Gods': History, Science, and Human Health" (Dec. 6, 2019), National Library of Medicine, <https://ncbi.nlm.nih.gov/pmc/articles/PMC6950163/>.

1 system, the central nervous system, the intestinal system, and the immune system.²³
 2 Dark chocolate in particular contains a higher percentage of cocoa and thus has higher
 3 phenolic antioxidant compounds when compared to other chocolate varieties. *Id.*

4 **16. Heavy Metals in Chocolate.** Despite chocolate's popularity and health
 5 benefits, researchers, manufacturers, and chocolate companies have known about the
 6 high levels of lead and cadmium in cocoa/chocolate products.²⁴ During the late 1970s,
 7 after seeing high concentrations of lead in foods and human populations, researchers
 8 began to focus on the source of lead in cocoa, the main ingredient in chocolate
 9 products. *Id.* Regarding milk chocolate products, the Food and Drug Administration
 10 reported in its 2000 Total Diet Survey (TDS), that the "average lead content for milk
 11 chocolate candy bars (27 ng/g) was the fourth highest reported for all food items." *Id.*
 12 The 20th Australian TDS showed that "milk chocolate had the second highest value
 13 of 65 foods, with a mean value of 21 ng/g and a maximum value of 40 ng/g," whereas
 14 the 1997/1998 New Zealand TDS found that "lead concentration in chocolate biscuits
 15 (15 ng/g) was 3-fold greater than those of cracker (5.2 ng/g) and plain sweet biscuits
 16 (5.2 ng/g)." *Id.* A 2005 study shows that cocoa-based chocolates sold in India, Dahiya
 17 had an "average lead concentration of 1.92 µg/g (range, 0.05-8.3 µg/g)," and another
 18 1999 study found the "average lead content of cocoa powders sold in Nigeria to be
 19 310 ng/g with a range of 80-850 ng/g." *Id.*

20 **17.** Lead and cadmium concentrations in dark chocolate are higher than those
 21 in milk chocolate, due to the higher amounts of cocoa solids. In a 2013 study,
 22 researchers found that "there was a linear correlation between the level of trace
 23

24
 25 ²³ "Cocoa and Dark Chocolate Polyphenols: From Biology to Clinical Applications"
 26 (June 9, 2017), National Library of Medicine,
 27 <https://ncbi.nlm.nih.gov/pmc/articles/PMC5465250/>.

28 ²⁴ Rankin, Charley W. "Lead contamination in cocoa and cocoa products: isotopic
 evidence of global contamination" (Oct. 2005), Environmental Health Perspective,
<https://pubmed.ncbi.nlm.nih.gov/16203244/>.

elements in chocolate and the cocoa solids content.”²⁵ Specifically, “lead was found to be correlative to the cocoa solids content in all brands” evaluated. *Id.* For example, the “distribution of trace metals in cocoa powder” was 103 ng/g for lead and 125 ng/g for cadmium. *Id.* In another 2014 study, the concentrations of cadmium and lead ranged from “<1.7-107.6 and <21-138.4 ng/g, respectively, and the highest concentrations of cadmium and lead were found in dark chocolates.”²⁶ This study also found that a “linear correlation exists between the cocoa content and the concentration of cadmium ($R^2=0.907$) and lead ($R^2=0.955$),” where the R^2 value “indicates the percentage of the variance” between two variables, meaning a value closer to 1, demonstrates a higher level of correlation. *Id.* This means that dark chocolate with 47-85% cocoa solids concentrations had higher lead and cadmium concentrations. Cocoa solids are the biggest sources of lead and cadmium in cocoa products, so dark chocolate products that have a high concentration of cocoa solids have higher concentrations of lead and other heavy metals.

18. Based on the prevailing research on lead and cadmium, Defendants knew or should have known that its chocolates have excessive levels of these heavy metals. Yet, Defendants failed to disclose to consumers the heavy metal content contained in its Products. This information is material to consumers because it influences their decision about whether to purchase the Products. This is especially true when the Products contain significant levels of both lead and cadmium, which are toxic heavy metals that can affect consumers’ health and safety. Defendants’ failure to disclose this information created a substantial and unreasonable health and safety risk to consumers.

²⁵ Yanus, Rinat Levi, et al. “Trace elements in cocoa solids and chocolate: An ICPMS study,” (May, 16, 2013), *Talanta*, <https://www.sciencedirect.com/science/article/abs/pii/S0039914013008473>.

²⁶ Villa, Javier E. L., et al. “Cadmium and Lead in Chocolates Commercialized in Brazil,” (Aug. 15, 2014), *Journal of Agricultural and Food Chemistry*, <https://pubs.acs.org/doi/abs/10.1021/jf5026604>.

1 **19. Sources of Lead and Cadmium.** Lead does not appear in cacao beans
 2 naturally; rather, lead is introduced in various ways from the soil where the cacao
 3 beans are grown and the water used for irrigation to the equipment used to process
 4 the beans.²⁷ These sources can include the “burning of leaded gasoline and diesel fuel,
 5 from leaded paint, the burning of plastics and/or garbage, the operation of smelters
 6 and other industrial processes, use of fertilizers, and emissions from coal-fired power
 7 plants,” which all spread lead to the soil and air.²⁸ The lead particles in the soil and
 8 air then penetrate the cacao beans during the outdoor harvesting, drying, and
 9 fermenting processes, and they remain on the wet cacao beans throughout other
 10 manufacturing steps. *Id.* Lead can also be present in metal equipment like the mixers
 11 and grinders used to process the beans. Much like lead, cadmium is introduced
 12 through the soil as it is absorbed by the roots of the cacao trees and deposited in parts
 13 of the fruits. *Id.* Cadmium levels are influenced by the pH of the soil, metals from
 14 fertilizers, and other inputs like water. *Id.*

15 **20. Harmful Health Effects of Lead and Cadmium.** Defendants’ Products
 16 contain heavy metals, and Defendants know this, but it nonetheless sells the Products
 17 without warning consumers that the lead and cadmium in them can seriously impact
 18 consumers’ health, especially in young children.

19 **21.** Young children are big consumers of chocolates, and thus “may be at risk
 20 of exceeding the daily limit of lead” since “one 10g cube of dark chocolate may
 21
 22
 23

24 ²⁷ Rankin, Charley W. “Lead contamination in cocoa and cocoa products: isotopic
 25 evidence of global contamination” (Oct. 2005), Environmental Health Perspective,
 26 <https://pubmed.ncbi.nlm.nih.gov/16203244/>.

27 ²⁸ Behar, Andrew. “New Report Details Simple, Safe, and Low-Cost Solutions to
 28 Reduce Levels of Lead and Cadmium in Chocolate” (August 17, 2022), As You
 Sow, [https://www.asyousow.org/blog/2022/8/17/new-report-explains-simple-safe-
 and-low-cost-solutions-to-reduce-levels-of-lead-and-cadmium-in-chocolate](https://www.asyousow.org/blog/2022/8/17/new-report-explains-simple-safe-and-low-cost-solutions-to-reduce-levels-of-lead-and-cadmium-in-chocolate).

1 contain as much as 20% of the daily lead oral limit.”²⁹ Children are disproportionately
 2 affected by heavy metal consumption, because children have a high digestive tract
 3 absorption factor. *Id.* Children, ages 2-6 years old, have an absorption factor of 30-
 4 75% compared to 11% by adults. *Id.* Thus, children are more affected by lead and
 5 cadmium in chocolate products, as they absorb a higher percentage of these heavy
 6 metals. This is especially concerning as children are a target group for chocolate
 7 manufacturers.

8 22. Lead has been linked to various negative health effects. Lead can be
 9 absorbed and stored in human bodies, organs, and tissues.³⁰ Short-term exposure to
 10 high amounts of lead can lead to encephalopathy. *Id.* Encephalopathy is a term for
 11 any disease of the brain that alters brain function or structure.³¹ Encephalopathy may
 12 quickly develop to “seizures, coma, and death from cardiorespiratory arrest.”³² In
 13 pregnant women, exposure to lead can affect the unborn child, and children “born to
 14 parents exposed to excess lead levels are more likely to have birth defects, mental
 15 retardation, behavioral disorders or die during the first year of childhood.” *Id.*
 16 Furthermore, lead exposure can cause miscarriages, stillbirths, and infertility in both
 17 men and women. *Id.* Long-term exposure to lead can result in severe damage to your

18
 19 ²⁹ Yanus, Rinat Levi, et al. “Trace elements in cocoa solids and chocolate: An
 20 ICPMS study,” (May 16, 2013), Talanta,

21 <https://www.sciencedirect.com/science/article/abs/pii/S0039914013008473>.

22 ³⁰ “Substance Data Sheet for Occupational Exposure to Lead” (May 31, 1991),

23 United States Department of Labor, [https://www.osha.gov/laws-
 24 regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%
 25 20portion%20of%20the,the%20blood%20and%20other%20tissues](https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%20portion%20of%20the,the%20blood%20and%20other%20tissues).

26 ³¹ “Encephalopathy” National Institute of Neurological Disorders and Stroke,

27 [https://www.ninds.nih.gov/health-
 28 information/disorders/encephalopathy#:~:text=Encephalopathy%20is%20a%20term
 %20for,Metabolic%20or%20mitochondrial%20dysfunction](https://www.ninds.nih.gov/health-information/disorders/encephalopathy#:~:text=Encephalopathy%20is%20a%20term%20for,Metabolic%20or%20mitochondrial%20dysfunction).

³² “Substance Data Sheet for Occupational Exposure to Lead” (May 31, 1991),

United States Department of Labor, [https://www.osha.gov/laws-
 regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%
 20portion%20of%20the,the%20blood%20and%20other%20tissues](https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%20portion%20of%20the,the%20blood%20and%20other%20tissues).

1 blood-forming, nervous, urinary, and reproductive systems.³³ Common systems of
 2 chronic overexposure include: “loss of appetite, metallic taste in the mouth, anxiety,
 3 constipation, nausea, pallor, excessive tiredness, weakness, insomnia, headache,
 4 nervous irritability, muscle and joint pain or soreness, fine tremors, numbness,
 5 dizziness, hyperactivity, and colic, which can cause severe abdominal pain. *Id.*
 6 Although exposure to lead is harmful to people of all ages, it typically affects children
 7 more than adults because children tend to show signs of severe lead toxicity at lower
 8 levels than adults.³⁴ In fact, any level of lead can have toxic manifestations because
 9 beathing in, swallowing, or absorbing lead particles results in a high level of lead
 10 remaining in the body, stored in bones, blood, and tissues, for months and even
 11 years.³⁵ Therefore, no amount of lead exposure is truly safe, making Defendants’
 12 Products: Lindt Excellence Dark Chocolate 70% Cocoa and Lindt Excellence Dark
 13 Chocolate 85% Cocoa especially dangerous as they contain significant levels of lead,
 14 48% and 166% of the MADL for lead, amounts that can cause drastic and severe
 15 adverse health effects especially with repeated consumption.

16 23. Like lead, cadmium causes harmful health effects. Cadmium is an
 17 element classified as a transition metal that is primarily used for commercial purposes
 18 and is produced by refining zinc ores.³⁶ Consuming food or water with high cadmium
 19

20 ³³ “Substance Data Sheet for Occupational Exposure to Lead” (May 31, 1991),
 21 United States Department of Labor, [https://www.osha.gov/laws-
 22 regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%
 23 20portion%20of%20the,the%20blood%20and%20other%20tissues](https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1025AppA#:~:text=A%20significant%20portion%20of%20the,the%20blood%20and%20other%20tissues).

24 ³⁴ “Toxicology Profile for Lead” (August 2020), U.S. Department for Health and
 25 Human Services: Agency for Toxic Substances and Disease Registry,
 26 <https://www.atsdr.cdc.gov/ToxProfiles/tp13.pdf>.

27 ³⁵ “Lead Poisoning” (Jan. 21, 2022), Mayo Clinic,
 28 [https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-
 causes/syc-20354717](https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/syc-20354717).

³⁶ “What is Cadmium” (Dec. 10, 2013), U.S. Department for Health and Human
 Services: Agency for Toxic Substances and Disease Registry,
<https://www.atsdr.cdc.gov/csem/cadmium/What-is-Cadmium.html>.

1 levels severely irritates the stomach, which can lead to vomiting or diarrhea.³⁷ In
 2 severe cases, exposure to cadmium can cause death. *Id.* Long-term exposure to low
 3 levels of cadmium can lead to a build-up of cadmium in the kidneys, which can
 4 eventually damage the kidneys when the build-up becomes large enough, and it can
 5 cause bones to become fragile and break easily. *Id.* Lab animals have been studied to
 6 confirm these effects, but current research suggests that young children are more
 7 easily susceptible to cadmium exposure, and so negative health effects are more
 8 severe for children. *Id.* Similarly to lead, exposure to cadmium even at the lowest
 9 levels can have harmful effects over time as cadmium builds up in the kidneys,
 10 stomach, and bones with each exposure.³⁸ Defendants' Lindt Excellence Dark
 11 Chocolate 70% Cocoa contains cadmium at 116% of the respective MADL and
 12 Defendants' Lindt Excellence Dark Chocolate 85% Cocoa contains cadmium at 80%
 13 of the respective MADL, both resulting in significant exposure to cadmium for
 14 anyone who consumes the Products and potential long-lasting and alarming health
 15 effects.

16 **24. Defendants Were Put on Notice that its Chocolate Contained**
 17 **Harmful Heavy Metals.** In 2016, As You Sow, a California-based consumer
 18 advocacy group, performed a study of the heavy metal content of cocoa products in
 19 2016.³⁹ The group sent samples of 50 different chocolate products to a third-party lab
 20 and discovered that more than half of these samples contained lead and cadmium. The
 21 levels at which cadmium and lead were present exceeded California's MADL, *Id.*
 22 which is based on California's Proposition 65 safe harbor levels of 0.5 micrograms
 23

24 ³⁷ "Toxicology Profile for Cadmium" (Sep. 2012), U.S. Department of Health and
 25 Human Services, <https://www.atsdr.cdc.gov/ToxProfiles/tp5.pdf>.

26 ³⁸ "Cadmium Factsheet" (April 7, 2017), Centers for Disease Control and
 27 Prevention, https://www.cdc.gov/biomonitoring/Cadmium_FactSheet.html.

28 ³⁹ Kounang, Nadia. "Is There Lead in Your Chocolate?" CNN. Cable News
 Network, March 25, 2016. <https://www.cnn.com/2016/03/25/health/chocolate-lead-test/index.html>.

1 for lead and 4.1 micrograms for cadmium.⁴⁰ The study purposefully did not disclose
 2 the exact levels contained within specific products, in hopes that manufacturers would
 3 partner with As You Sow to address the high levels of lead and cadmium in their
 4 respective product lines. Ultimately, Defendants and other chocolate manufacturers
 5 agreed to regularly test their chocolate products and to include warning labels on those
 6 that exceeded lead and cadmium threshold levels agreed upon by As You Sow and
 7 the chocolate manufacturers.⁴¹ As You Sow's efforts effectively put Defendants on
 8 notice that it had a duty to test its Products for the presence of these metals and
 9 subsequently remove them, or adequately disclose to consumers that these heavy
 10 metals were present in their Products and posed serious health risks to consumers.
 11 Yet, as Consumer Reports' recent study reveals, the Products contain harmful levels
 12 of heavy metals and fail to include any warning to consumers about their existence.⁴²

13 25. By failing to inform consumers that its Products contain lead and
 14 cadmium, Defendants deceptively label and advertise its Products as if they are safe
 15 for consumption when they are not. Through its omission, Defendants expose the
 16 consuming public to increased health risks posed by these harmful heavy metals.
 17 Defendants knew of the Products' heavy metal content and the associated health risks
 18 and yet it failed, and continues to fail, to disclose this material information to
 19 consumers, breaching its duty to disclose and thereby seriously impacting the health
 20 of consumers.

21 26. **Creating Safe Dark Chocolate Products is Possible.** Lead in dark
 22 chocolate can be reduced to a safe level or eliminated by improving agricultural,
 23

24 ⁴⁰ "Proposition 65," California Office of Environmental Health Hazard Assessment,
 25 OEHHHA, <https://oehha.ca.gov/proposition-65>.

26 ⁴¹ *As You Sow v. Trader Joe's Company, et al.*, No CGC-15-548791 (Consent
 Judgment, Feb. 15, 2018).

27 ⁴² "Lead and Cadmium Could Be in Your Dark Chocolate" (Dec. 15, 2022),
 28 Consumer Reports, <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/>.

1 manufacturing, and business practices, including: (1) preventing the introduction of
 2 lead during bean fermentation and drying, (2) preventing the introduction of lead
 3 during the transportation of whole wet beans, and (3) establishing better
 4 cleaning/winnowing quality assurance practices to reduce lead amounts.⁴³ Levels of
 5 cadmium can be reduced by: (1) planting new orchards in regions with low levels of
 6 cadmium, and (2) using soil amendments to increase soil pH. *Id.* According to
 7 Consumer Reports' December 2022 study that measured the amount of heavy metals
 8 in dark chocolates against California's MADL, researchers found that "while most of
 9 the chocolate bars in CR's tests had concerning levels of lead, cadmium, or both, five
 10 of them were relatively low in both," meaning that it is "possible for companies to
 11 make products with lower amounts of heavy metals—and for consumers to find safer
 12 products that they enjoy."⁴⁴

13 **B. Plaintiff and Reasonable Consumers were Misled by Defendants'**
 14 **Material Omission**

15 27. **Material Omission on Products' Labels.** Defendants manufacture,
 16 market, advertise, label, package, and sell the Products. Defendants deceive
 17 consumers by failing to disclose that the Products contain cadmium and lead, placing
 18 consumers at risk of serious health effects. Reasonable consumers have no way of
 19 knowing, nor do they have a reason to know or believe, that the Products pose threats
 20 to their health. Defendants' failure to disclose this information is material because
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22
 23 ⁴³ Anh, Timothy, et al. "Expert Investigation Related to Cocoa and Chocolate
 24 Products: Final Report" (Mar. 28, 2022). As You Sow,
 25 [https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/62fd592790137e31288a1698/](https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/62fd592790137e31288a1698/1660770607858/AsYouSow_ChocolateFullReport_FIN_20220817.pdf)
 26 [1660770607858/AsYouSow_ChocolateFullReport_FIN_20220817.pdf](https://static1.squarespace.com/static/59a706d4f5e2319b70240ef9/t/62fd592790137e31288a1698/1660770607858/AsYouSow_ChocolateFullReport_FIN_20220817.pdf).

27 ⁴⁴ "Lead and Cadmium Could Be in Your Dark Chocolate" (Dec. 15, 2022),
 28 Consumer Reports, <https://www.consumerreports.org/health/food-safety/lead-and-cadmium-in-dark-chocolate-a8480295550/>.

1 consumers would not purchase the Products if the alarming levels of lead and
2 cadmium in the Products were clearly disclosed.

3 **28. Consumers Reasonably Believe the Products are Safe for**
4 **Consumption.** Plaintiff and other reasonable consumers perceive and reasonably
5 expect food products that are sold in the marketplace to be safe for human
6 consumption. Plaintiff and other reasonable consumers were unaware of the lead and
7 cadmium content of the Products and reasonably believed the Products to be safe for
8 consumption. Defendants failed to inform consumers about the lead and cadmium
9 contained in the Products, furthering consumer deception about the safeness of the
10 Products.

11 **29. The Products are Not Safe for Consumption.** As outlined *supra*, lead
12 and cadmium, *at any concentration*, pose serious health risks when consumed.
13 Defendants' Lindt Excellence Dark Chocolate 70% Cocoa contains 116% of the
14 MADL for cadmium and 48% of the MADL for lead, per ounce. Defendants' Lindt
15 Excellence Dark Chocolate 85% Cocoa contains 166% of the MADL for lead and
16 80% of the MADL for cadmium, per ounce. These concentrations of heavy metals
17 pose serious health risks to consumers, even for those that ingest only one serving of
18 the Products. Here, the Products each contain 3.5 oz with either 2.5 or 3.5 servings
19 per bar.

20 **30. Deception.** Defendants' failure to disclose material information
21 regarding the inclusion of lead and cadmium in the Products was deceptive since it
22 misled consumers, including Plaintiff, to believe the Products are safe for
23 consumption when they are not.

24 **31. Omission and Obligation to Disclose.** As set forth herein, Defendants
25 omit the presence of harmful heavy metals in its Products, leading consumers into
26 purchasing the Products without knowing they are consuming dangerous heavy
27 metals that they likely would not have otherwise willingly consumed. Defendants
28 have an obligation to disclose the presence of heavy metals in its Products, because

1 this information is material to consumers and Defendants know or should know about
2 the heavy metals contained in its Products.

3 32. **Material.** Information about the presence of heavy metals in Defendants'
4 Products is material to reasonable consumers, including Plaintiff, because it has the
5 potential to influence their decision to purchase the Products, as set forth herein.
6 Plaintiff would not have purchased the Products had Defendants disclosed the
7 Products contain heavy metals.

8 33. **Reliance.** Reasonable consumers, including Plaintiff, reasonably relied
9 on the Products' labeling, which failed to disclose that the Products contained heavy
10 metals, in deciding to purchase the Products, as set forth herein.

11 34. **Falsity.** The Products' representation as dark chocolate products that are
12 safe for consumption is false and deceptive because the Products are not safe for
13 consumption—meaning the Products contain harmful heavy metals which cause
14 severe health issues to consumers.

15 35. **Consumers Lack Knowledge of Deception/Fraudulence.** Consumers,
16 including Plaintiff, who purchased the Products, did not know, and had no reason to
17 know, at the time of purchase, that the Products' contained heavy metals.

18 36. **Defendants' Knowledge.** Defendants knew, or should have known, that
19 its Products contain lead and cadmium, and its failure to inform consumers about
20 those heavy metals in its Products was misleading and unlawful. Defendants
21 intentionally and deliberately omitted this information to cause Plaintiff and similarly
22 situated consumers to purchase the Products. Defendants, as the manufacturers, had
23 exclusive control over how the Products were marketed and labeled, and Defendants
24 readily and easily could have remedied the deception by disclosing to consumers that
25 its Products contain lead and cadmium. Defendants are and were, at all times, required
26 to ensure its Products were safe for consumption, when selling the Products anywhere
27 in the United States. Thus, Defendants knew, or should have known, at all relevant
28 times, that the Products' labels were deceptive, and reasonable consumers like

1 Plaintiff were being misled into buying the Products because they lacked Defendants'
2 knowledge about the heavy metals contained in the Products.

3 37. **Detriment.** Plaintiff and similarly situated consumers would not have
4 purchased the Products if they had known that the Products contain harmful metals
5 and, therefore, the Products were not safe for consumption as claimed, promised,
6 warranted, advertised, and represented. Accordingly, based on Defendants' material
7 omissions, reasonable consumers, including Plaintiff, purchased the Products to their
8 detriment.

9 **C. No Adequate Remedy at Law**

10 38. Plaintiff and members of the Class are entitled to equitable relief as no
11 adequate remedy at law exists.

12 a. **Broader Statutes of Limitations.** The statutes of limitations for the
13 causes of action pled herein vary. The limitations period is four years
14 for claims brought under the UCL, which is one year longer than the
15 statutes of limitations under the FAL and CLRA. In addition, the
16 statutes of limitations vary for certain states' laws for breach of
17 warranty and unjust enrichment/restitution, between approximately 2
18 and 6 years. Thus, California Subclass members who purchased the
19 Products more than 3 years prior to the filing of the complaint will be
20 barred from recovery if equitable relief were not permitted under the
21 UCL. Similarly, Nationwide Class members who purchased the
22 Products prior to the furthest reach-back under the statute of
23 limitations for breach of warranty, will be barred from recovery if
24 equitable relief were not permitted for restitution/unjust enrichment.

25 b. **Broader Scope of Conduct.** In addition, the scope of
26 actionable misconduct under the unfair prong of the UCL is
27 broader than the other causes of action asserted herein. It
28 includes, for example, Defendants' overall unfair material

omission about the lead and cadmium contained in its Products, in order to gain an unfair advantage over competitor products and to take advantage of consumers' desire for products that comport with the required disclosures. The UCL also creates a cause of action for violations of law (such as statutory or regulatory requirements and court orders related to similar representations and omissions made on the type of products at issue). Thus, Plaintiff and Class members may be entitled to restitution under the UCL, while not entitled to damages under other causes of action asserted herein (e.g., the FAL requires actual or constructive knowledge of the falsity; the CLRA is limited to certain types of plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes) and other statutorily enumerated conduct). Similarly, unjust enrichment/restitution is broader than breach of warranty. For example, in some states, breach of warranty may require privity of contract or pre-lawsuit notice, which are not typically required to establish unjust enrichment/restitution. Thus, Plaintiff and Class members may be entitled to recover under unjust enrichment/restitution, while not entitled to damages under breach of warranty, because they purchased the products from third-party retailers or did not provide adequate notice of a breach prior to the commencement of this action.

c. **Injunctive Relief to Cease Misconduct and Dispel Misperception.** Injunctive relief is appropriate on behalf of Plaintiff and members of the Class because Defendants

1 continue to sell the Products without disclosing that the
2 Products contain harmful heavy metals. Injunctive relief is
3 necessary to prevent Defendants from continuing to engage
4 in the unfair, fraudulent, and/or unlawful conduct described
5 herein and to prevent future harm—none of which can be
6 achieved through available legal remedies (such as monetary
7 damages to compensate past harm). Further, injunctive relief,
8 in the form of affirmative disclosures, is necessary to dispel
9 the public misperception about the Products that has resulted
10 from years of Defendants’ unfair, fraudulent, and unlawful
11 marketing efforts. Such disclosures would include, but are not
12 limited to, publicly disseminated statements providing
13 accurate information about the Products’ true nature; and/or
14 requiring prominent qualifications and/or disclaimers on the
15 Products’ front label concerning the Products’ true nature. An
16 injunction requiring affirmative disclosures to dispel the
17 public’s misperception and prevent the ongoing deception
18 and repeat purchases based thereon, is also not available
19 through a legal remedy (such as monetary damages). In
20 addition, Plaintiff is *currently* unable to accurately quantify
21 the damages caused by Defendants’ future harm, because
22 discovery and Plaintiff’s investigation have not yet
23 completed, rendering injunctive relief all the more necessary.
24 For example, because the court has not yet certified any class,
25 the following remains unknown: the scope of the class, the
26 identities of its members, their respective purchasing
27 practices, prices of past/future Products’ sales, and quantities
28 of past/future Products’ sales.

1 d. **Public Injunction.** Further, because a “public injunction” is
 2 available under the UCL, damages will not adequately
 3 “benefit the general public” in a manner equivalent to an
 4 injunction.

5 e. **California vs. Nationwide Class Claims.** Violations of the
 6 UCL, FAL, and CLRA are claims asserted on behalf of
 7 Plaintiff and the California Subclass against Defendants,
 8 while breach of warranty, unjust enrichment/restitution, and
 9 negligent failure to warn are asserted on behalf of Plaintiff
 10 and the Nationwide Class. Dismissal of farther-reaching
 11 claims, such as restitution, would bar recovery for non-
 12 California members of the Class. In other words, legal
 13 remedies available or adequate under the California-specific
 14 causes of action (such as the UCL, FAL, and CLRA) have no
 15 impact on this Court’s jurisdiction to award equitable relief
 16 under the remaining causes of action asserted on behalf of
 17 non-California putative class members.

18 f. **Procedural Posture—Incomplete Discovery & Pre-**
 19 **Certification.** Lastly, this is an initial pleading in this action,
 20 and discovery has not yet commenced and/or is at its initial
 21 stages. No class has been certified yet. No expert discovery
 22 has commenced and/or completed. The completion of
 23 fact/non-expert and expert discovery, as well as the
 24 certification of this case as a class action, are necessary to
 25 finalize and determine the adequacy and availability of all
 26 remedies, including legal and equitable, for Plaintiff’s
 27 individual claims and any certified class or subclass. Plaintiff
 28 therefore reserves his right to amend this complaint and/or

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8 39. **Class Definition.** Plaintiff brings this class action pursuant to Federal
9 Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of himself and all others
10 similarly situated, and as members of the Classes defined as follows:

11 All residents of the United States who, within the applicable statute of
12 limitations, purchased the Product(s) for purposes other than resale
("Nationwide Class"); and

13 All residents of California who, within four years prior to the filing of this
14 Complaint, purchased the Product(s) for purposes other than resale
("California Subclass").

15 (“Nationwide Class” and “California Subclass,” collectively, “Class”).

16 **40. Class Definition Exclusions.** Excluded from the Class are: (i)
17 Defendants, its assigns, successors, and legal representatives; (ii) any entities in which
18 Defendants have controlling interests; (iii) federal, state, and/or local governments,
19 including, but not limited to, their departments, agencies, divisions, bureaus, boards,
20 sections, groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding
21 over this matter and person within the third degree of consanguinity to such judicial
22 officer.

41. **Reservation of Rights to Amend the Class Definition.** Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at the appropriate time in response to facts learned through discovery, legal arguments advanced by Defendants, or otherwise.

42. **Numerosity.** Members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, the Nationwide Class

1 consists of tens of thousands of purchasers (if not more) dispersed throughout the
 2 United States, and the California Subclass likewise consists of thousands of
 3 purchasers (if not more) dispersed throughout the state of California. Accordingly, it
 4 would be impracticable to join all members of the Class before the Court.

5 43. **Common Questions Predominate.** There are numerous and substantial
 6 questions of law or fact common to all members of the Class that predominate over
 7 any individual issues. Included within the common questions of law or fact are:

- 8 a. Whether Defendants engaged in unlawful, unfair, or deceptive
 9 business practices by advertising and selling the Products;
- 10 b. Whether Defendants' conduct of advertising and selling the
 11 Products while omitting that they contain harmful heavy metals
 12 constitutes an unfair method of competition, or unfair or deceptive
 13 act or practice, in violation of Civil Code section 1750, *et seq.*;
- 14 c. Whether Defendants used deceptive omissions in connection with
 15 the sale of the Products in violation of Civil Code section 1750, *et*
 16 *seq.*;
- 17 d. Whether Defendants represented that the Products have
 18 characteristics or quantities that they do not have in violation of
 19 Civil Code section 1750, *et seq.*;
- 20 e. Whether Defendants advertised the Products with intent not to sell
 21 them as advertised in violation of Civil Code section 1750, *et seq.*;
- 22 f. Whether Defendants' labeling and advertising of the Products are
 23 misleading in violation of Business and Professions Code section
 24 17500, *et seq.*;
- 25 g. Whether Defendants knew or by the exercise of reasonable care
 26 should have known its labeling and advertising was and is
 27 misleading in violation of Business and Professions Code section
 28 17500, *et seq.*;

- h. Whether Defendants' conduct is an unfair business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- i. Whether Defendants' conduct is a fraudulent business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- j. Whether Defendants' conduct is an unlawful business practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- k. Whether Defendants' conduct constitutes breach of warranty;
- l. Whether Defendants were negligent in its failure to warn consumers about the heavy metals contained in the Products;
- m. Whether Plaintiff and the Class are entitled to injunctive relief; and
- n. Whether Defendants were unjustly enriched by its unlawful conduct.

44. **Typicality.** Plaintiff's claims are typical of the claims of the Class Members he seeks to represent because Plaintiff, like the Class Members, purchased Defendants' misleading and deceptive Products. Defendants' unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendants' conduct. Plaintiff's and Class Members' claims arise from the same practices and course of conduct and are based on the same legal theories.

45. **Adequacy.** Plaintiff is an adequate representative of the Class he seeks to represent because his interests do not conflict with the interests of the Class Members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class Members' interests and has retained counsel experienced and competent in the

1 prosecution of complex class actions, including complex questions that arise in
2 consumer protection litigation.

3 **46. Superiority and Substantial Benefit.** A class action is superior to other
4 methods for the fair and efficient adjudication of this controversy, since individual
5 joinder of all members of the Class is impracticable and no other group method of
6 adjudication of all claims asserted herein is more efficient and manageable for at least
7 the following reasons:

- 8 a. The claims presented in this case predominate over any
9 questions of law or fact, if any exist at all, affecting any
10 individual member of the Class;
- 11 b. Absent a Class, the members of the Class will continue to
12 suffer damage and Defendants' unlawful conduct will
13 continue without remedy while Defendants profit from and
14 enjoy its ill-gotten gains;
- 15 c. Given the size of individual Class Members' claims, few, if
16 any, Class Members could afford to or would seek legal
17 redress individually for the wrongs Defendants committed
18 against them, and absent Class Members have no substantial
19 interest in individually controlling the prosecution of
20 individual actions;
- 21 d. When the liability of Defendants have been adjudicated,
22 claims of all members of the Class can be administered
23 efficiently and/or determined uniformly by the Court; and
- 24 e. This action presents no difficulty that would impede its
25 management by the Court as a class action, which is the best
26 available means by which Plaintiff and Class Members can
27 seek redress for the harm caused to them by Defendants.
- 28

1 47. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of
 2 the Class, the prosecution of separate actions by individual members would create a
 3 risk of inconsistent or varying adjudications with respect to individual members of
 4 the Class, which would establish incompatible standards of conduct for Defendants.

5 48. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class
 6 action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as
 7 Defendants have acted or refused to act on grounds generally applicable to the Class,
 8 thereby making appropriate final injunctive or equitable relief with respect to the
 9 Class as a whole.

10 49. **Manageability.** Plaintiff and Plaintiff's counsel are unaware of any
 11 difficulties that are likely to be encountered in the management of this action that
 12 would preclude its maintenance as a class action.

13 **CAUSES OF ACTION**

14 **COUNT ONE**

15 **Violation of California Unfair Competition Law**

16 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

17 ***(On Behalf of the California Subclass)***

18 50. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by
 19 reference all allegations contained in this complaint, as though fully set forth herein.

20 51. **California Subclass.** This cause of action is brought pursuant to Business
 21 and Professions Code Section 17200, *et seq.*, on behalf of Plaintiff and a California
 22 Subclass who purchased the Products within the applicable statute of limitations.

23 52. **The UCL.** California Business & Professions Code, sections 17200, *et*
 24 *seq.* (the "UCL") prohibits unfair competition and provides, in pertinent part, that
 25 "unfair competition shall mean and include unlawful, unfair or fraudulent business
 26 practices and unfair, deceptive, untrue or misleading advertising."

27 53. **False Advertising Claims.** Defendants, in its advertising and packaging
 28 of the Products, made fraudulent omissions regarding the quality and characteristics

1 of the Products—specifically, Defendants failed to inform consumers that its Products
2 contain heavy metals lead and cadmium.

3 **54. Defendants’ Deliberately Fraudulent Marketing Scheme.** Defendants
4 do not have any reasonable basis for failing to inform consumers about the dangerous
5 heavy metals in its Products because the consumption of the Products may result in
6 various health issues in adults and children. Defendants knew and continue to know
7 that the Products are not safe for consumption, though Defendants intentionally
8 advertised and marketed the Products to deceive reasonable consumers into believing
9 that they are safe when they are not.

10 **55. Misleading Advertising Claims Cause Purchase of Products.**
11 Defendants’ labeling and advertising of the Products led to, and continues to lead to,
12 reasonable consumers, including Plaintiff, believing that the Products are truly safe
13 for consumption as there is no disclaimer or indication that the Products contain
14 harmful heavy metals.

15 **56. Injury in Fact.** Plaintiff and the California Subclass have suffered injury
16 in fact and have lost money or property as a result of and in reliance upon Defendants’
17 false advertising and material omissions—namely Plaintiff and the California
18 Subclass lost the money they paid for the Products.

19 **57. Conduct Violates the UCL.** Defendants’ conduct, as alleged herein,
20 constitutes unfair, unlawful, and fraudulent business practices pursuant to the UCL.
21 The UCL prohibits unfair competition and provides, in pertinent part, that “unfair
22 competition shall mean and include unlawful, unfair or fraudulent business practices
23 and unfair, deceptive, untrue or misleading advertising.” Cal. Bus & Prof. Code §
24 17200. In addition, Defendants’ use of various forms of advertising media to
25 advertise, call attention to, or give publicity to the sale of goods or merchandise that
26 are not as represented in any manner constitutes unfair competition, unfair, deceptive,
27 untrue or misleading advertising, and an unlawful business practice within the
28 meaning of Business and Professions Code Sections 17200 and 17531, which

1 advertisements have deceived and are likely to deceive the consuming public, in
2 violation of Business and Professions Code Section 17200.

3 **58. No Reasonably Available Alternatives/Legitimate Business Interests.**
4 Defendants failed to avail itself of reasonably available, lawful alternatives to further
5 its legitimate business interests.

6 **59. Business Practice.** All of the conduct alleged herein occurred and
7 continues to occur in Defendants' business. Defendants' wrongful conduct is part of
8 a pattern, practice and/or generalized course of conduct, which will continue daily
9 until Defendants voluntarily alter its conduct or Defendants are otherwise ordered to
10 do so.

11 **60. Injunction.** Pursuant to Business and Professions Code Sections 17203
12 and 17535, Plaintiff and the members of the California Subclass seek an order of this
13 Court enjoining Defendants from continuing to engage, use, or employ its practice of
14 omitting material information regarding the heavy metal content of its Products.
15 Plaintiff and the members of the California Subclass also seek an order requiring
16 Defendants to disclose such information, and/or precluding Defendants from selling
17 the Products.

18 **61. Causation/Damages.** As a direct and proximate result of Defendants'
19 misconduct in violation of the UCL, Plaintiff and members of the California Subclass
20 were harmed in the amount of the purchase price they paid for the Products. Further,
21 Plaintiff and members of the California Subclass have suffered and continue to suffer
22 economic losses and other damages including, but not limited to, the amounts paid
23 for the Products, and any interest that would have accrued on those monies, in an
24 amount to be proven at trial. Accordingly, Plaintiff seeks restitution and/or
25 disgorgement of ill-gotten gains to compensate Plaintiff and the California Subclass
26 for said monies, as well as injunctive relief to enjoin Defendants' misconduct to
27 prevent ongoing and future harm that will result.

28 //

“Unfair” Prong

62. **Unfair Standard.** Under the UCL, a challenged activity is “unfair” when “any injury it causes outweighs any benefits provided to consumers and the injury is one that the consumers themselves could not reasonably avoid.” *Camacho v. Auto Club of Southern California*, 142 Cal. App. 4th 1394, 1403 (2006).

63. **Injury.** Defendants’ action of omitting material information does not confer any benefit to consumers; rather, doing so causes injuries to consumers, who do not receive products commensurate with their reasonable expectations, receive Products of lesser standards than what they reasonably expected to receive, and are exposed to increased health risks. Consumers cannot avoid any of the injuries caused by Defendants’ deceptive labeling and omissions of the Products. The injuries caused by Defendants’ deceptive labeling and advertising outweigh any benefits.

64. **Balancing Test.** Some courts conduct a balancing test to decide if a challenged activity amounts to unfair conduct under California Business and Professions Code Section 17200. They “weigh the utility of the defendant’s conduct against the gravity of the harm to the alleged victim.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

65. **No Utility.** Defendants’ conduct of omitting material information has no utility and rather harms purchasers. Thus, the utility of Defendants’ conduct is vastly outweighed by the gravity of harm.

66. **Legislative Declared Policy.** Some courts require that “unfairness must be tethered to some legislative declared policy or proof of some actual or threatened impact on competition.” *Lozano v. AT&T Wireless Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

67. **Unfair Conduct.** Defendants’ labeling and advertising of the Products, as alleged herein, is deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendants knew or should have known of its unfair conduct. Defendants’ omissions constitute an unfair business practice within the meaning of California

1 Business and Professions Code Section 17200.

2 68. **Reasonably Available Alternatives.** There existed reasonably available
3 alternatives to further Defendants' legitimate business interests, other than the
4 conduct described herein. Defendants could have disclosed that its Products contain
5 heavy metals or it could have removed the heavy metals from the Products.

6 69. **Defendants' Wrongful Conduct.** All the conduct alleged herein occurs
7 and continues to occur in Defendants' business. Defendants' wrongful conduct is part
8 of a pattern or generalized course of conduct repeated on thousands of occasions daily.

9 70. **Injunction.** Pursuant to Business and Professions Code Sections 17203,
10 Plaintiff and the California Subclass seek an order of this Court enjoining Defendants
11 from continuing to engage, use, or employ its practice of omitting material
12 information regarding the heavy metals content of its Products.

13 71. **Causation/Damages.** Plaintiff and the California Subclass have suffered
14 injury in fact, have lost money, and were exposed to increased health risks as a result
15 of Defendants' unfair conduct. Plaintiff and the California Subclass paid for Products
16 that were supposedly safe for consumption when they were not. Plaintiff and the
17 California Subclass would not have purchased the Products if they had known that
18 the Products' advertising and labeling were deceptive. Accordingly, Plaintiff seeks
19 restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

20 **"Fraudulent" Prong**

21 72. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits
22 said conduct) if it is likely to deceive members of the public. *Bank of the West v.*
23 *Superior Court*, 2 Cal. 4th 1254, 1267 (1992).

24 73. **Fraudulent & Material Omission.** Defendants sold the Products by
25 omitting material information relating to the heavy metals contained in them. These
26 omissions were deceptive, and Defendants knew or should have known of their
27 deception. The omissions are likely to mislead consumers into purchasing the
28 Products because they are material to the average, ordinary, and reasonable consumer.

74. **Fraudulent Business Practice.** As alleged herein, the omissions by Defendants constitute a fraudulent business practice in violation of California Business & Professions Code Section 17200.

75. Reasonable and Detrimental Reliance. Plaintiff and the California Subclass reasonably and detrimentally relied on the labeling on the Products to their detriment in that they purchased the Products without knowing the dangers of consuming the Products.

76. **Reasonably Available Alternatives.** Defendants had reasonably available alternatives to further its legitimate business interests, other than the conduct described herein. Defendants could have refrained from selling the Products, or it could have disclosed the heavy metal content in the Products, or implemented measures to prevent harmful heavy metals in its Products.

77. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct.

78. **Injunction.** Pursuant to Business and Professions Code Sections 17203, Plaintiff and the California Subclass seek an order of this Court enjoining Defendants from continuing to engage, use, or employ its practice of omitting material information regarding the heavy metal content of its Products.

79. **Causation/Damages.** Plaintiff and the California Subclass have suffered injury in fact and have lost money as a result of Defendants' fraudulent conduct. Plaintiff and the California Subclass paid for products that they believed would be safe for consumption, when, in fact, the Products contain harmful heavy metals. Plaintiff and the California Subclass would not have purchased the Products if they had known the truth. Accordingly, Plaintiff seeks restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

“Unlawful” Prong

80. **Unlawful Standard.** The UCL identifies violations of other laws as

1 “unlawful practices that the unfair competition law makes independently actionable.”
 2 *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1068 (C.D. Cal. 2008).

3 **81. Violations of CLRA and FAL.** Defendants’ labeling of the Products, as
 4 alleged herein, violates California Civil Code sections 1750, *et seq.* and California
 5 Business and Professions Code sections 17500, *et seq.* as set forth below in the
 6 sections regarding those causes of action.

7 **82. Additional Violations.** Defendants’ conduct in making the deceptive
 8 omissions described herein constitutes a knowing failure to adopt policies in
 9 accordance with and/or adherence to applicable laws, as set forth herein, all of which
 10 are binding upon and burdensome to their competitors. This conduct engenders an
 11 unfair competitive advantage for Defendants, thereby constituting an unfair,
 12 fraudulent and/or unlawful business practice under California Business & Professions
 13 Code sections 17200-17208. Additionally, Defendants’ omissions of material facts,
 14 as set forth herein, violate California Civil Code sections 1572, 1573, 1709, 1710, and
 15 1711, as well as the common law.

16 **83. Unlawful Conduct.** Defendants’ packaging, labeling, and advertising of
 17 the Products, as alleged herein, are deceptive, misleading, and unreasonable, and
 18 constitute unlawful conduct. Defendants knew or should have known of its unlawful
 19 conduct.

20 **84. Reasonably Available Alternatives.** Defendants had reasonably
 21 available alternatives to further its legitimate business interests, other than the conduct
 22 described herein. Defendants could have refrained from selling the Products, or it
 23 could have disclosed the heavy metal content in the Products, or implemented
 24 measures to prevent harmful heavy metals in its Products.

25 **85. Business Practice.** All the conduct alleged herein occurs and continues
 26 to occur in Defendants’ business. Defendants’ wrongful conduct is part of a pattern
 27 or generalized course of conduct.

28 **86. Injunction.** Pursuant to Business and Professions Code Section 17203,

1 Plaintiff and the California Subclass seek an order of this Court enjoining Defendants
2 from continuing to engage, use, or employ its practice of omitting material
3 information regarding the heavy metal content of its Products.

4 **87. Causation/Damages.** Plaintiff and the California Subclass have suffered
5 injury in fact and have lost money as a result of Defendants' unlawful conduct.
6 Plaintiff and the California Subclass would not have purchased the Products if they
7 had known that Defendants purposely deceived consumers into believing that the
8 Products are safe for consumption. Accordingly, Plaintiff seeks restitution and/or
9 disgorgement of ill-gotten gains pursuant to the UCL.

10 **COUNT TWO**

11 **Violation of California False Advertising Law**

12 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

13 **(*On Behalf of the California Subclass*)**

14 **88. Incorporation by reference.** Plaintiff re-alleges and incorporates by
15 reference all allegations contained in this complaint, as though fully set forth herein.

16 **89. California Subclass.** Plaintiff brings this claim individually and on
17 behalf of the California Subclass who purchased the Products within the applicable
18 statute of limitations.

19 **90. FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof.
20 Code section 17500, *et seq.*, prohibits "unfair, deceptive, untrue or misleading
21 advertising[.]"

22 **91. Material Omission Disseminated to the Public.** Defendants violated
23 section 17500 when it sold the Products to the public without disclosing the heavy
24 metals contained in them. This conduct was deceptive because the Products' labeling
25 omits material information regarding the heavy metal content of its Products. The
26 omissions were material because they are likely to mislead a reasonable consumer
27 into purchasing the Products.

28 **92. Knowledge.** Defendants knew or should have known that its failure to

1 disclose information relating to the heavy metals contained in its Products was
2 misleading and in violation of § 17500.

3 93. **Intent to sell.** Defendants' conduct was specifically designed to induce
4 reasonable consumers, like Plaintiff and the California Subclass, to purchase the
5 Products.

6 94. **Causation/Damages.** As a direct and proximate result of Defendants'
7 misconduct in violation of the FAL, Plaintiff and members of the California Subclass
8 were harmed in the amount of the purchase price they paid for the Products and
9 increased health risks from consuming the heavy metals in the Products. Further,
10 Plaintiff and members of the Class have suffered and continue to suffer economic
11 losses and other damages including, but not limited to, the amounts paid for the
12 Products, and any interest that would have accrued on those monies, in an amount to
13 be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the
14 FAL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate
15 Plaintiff and the California Subclass for said monies, as well as injunctive relief to
16 enjoin Defendants' misconduct to prevent ongoing and future harm that will result.

17 **COUNT THREE**

18 **Violation of California Consumers Legal Remedies Act**

19 **(Cal. Civ. Code §§ 1750, *et seq.*)**

20 ***(On Behalf of the California Subclass)***

21 95. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by
22 reference all allegations contained in this complaint, as though fully set forth herein.

23 96. **California Subclass.** Plaintiff brings this claim individually and on
24 behalf of the California Subclass who purchased the Products within the applicable
25 statute of limitations.

26 97. **CLRA Standard.** The CLRA provides that "unfair methods of
27 competition and unfair or deceptive acts or practices undertaken by any person in a
28 transaction intended to result or which results in the sale or lease of goods or services

1 to any consumer are unlawful.”

2 98. **Goods/Services.** The Products are “goods,” as defined by the CLRA in
3 California Civil Code §1761(a).

4 99. **Defendants.** Defendants are a “person,” as defined by the CLRA in
5 California Civil Code §1761(c).

6 100. **Consumers.** Plaintiff and members of the California Subclass are
7 “consumers,” as defined by the CLRA in California Civil Code §1761(d).

8 101. **Transactions.** The purchase of the Products by Plaintiff and members of
9 the California Subclass are “transactions” as defined by the CLRA under California
10 Civil Code section 1761(e).

11 102. **Violations of the CLRA.** Defendants violated the following sections of
12 the CLRA by selling the Products to Plaintiff and the California Subclass without
13 disclosing that the Products contain lead and cadmium:

- 14 a. Section 1770(a)(5) by representing that the Products have
15 “characteristics, . . . uses [or] benefits . . . which [they] do not have.”
- 16 b. Section 1770(a)(7) by representing that the Products “are of a particular
17 standard, quality, or grade . . . [when] they are of another.”
- 18 c. Section 1770(a)(9) by advertising the Products “with [the] intent not to
19 sell them as advertised.”

20 103. **Knowledge.** Defendants’ uniform and material omissions regarding the
21 Products were likely to deceive, and Defendants knew or should have known that its
22 omissions were misleading.

23 104. **Malicious.** Defendants’ conduct is malicious, fraudulent, and wanton in
24 that Defendants intentionally misled and withheld material information from
25 consumers, including Plaintiff, to increase the sales of the Products.

26 105. **Plaintiff Could Not Have Avoided Injury.** Plaintiff and members of the
27 California Subclass could not have reasonably avoided such injury. Plaintiff and
28 members of the California Subclass were unaware of the existence of the facts that
Defendants suppressed and failed to disclose, and Plaintiff and members of the

1 California Subclass would not have purchased the Products had they known the truth.

2 106. **Causation/Reliance/Materiality.** Plaintiff and the California Subclass
3 suffered harm as a result of Defendants' violations of the CLRA because they
4 purchased the Products without knowing they contained heavy metals. Defendants'
5 omission of this information was material because a reasonable consumer would
6 consider the information important in deciding whether to purchase the Products.

7 107. **Section 1782(d) Notice Requirement.** Pursuant to California Civil Code,
8 section 1782, on January 13, 2023, Plaintiff, on Plaintiff's behalf and on behalf of
9 members of the Class, notified Defendants of its alleged violations of the CLRA via
10 U.S. Certified Mail.

11 108. **Causation/Damages (Section 1782(d)).** As a direct and proximate result
12 of Defendants' misconduct in violation of the CLRA, Plaintiff and members of the
13 California Subclass were harmed in the amount of the purchase price they paid for
14 the Products. Further, Plaintiff and members of the Class have suffered and continue
15 to suffer economic losses and other damages including, but not limited to, the amounts
16 paid for the Products, and any interest that would have accrued on those monies, in
17 an amount to be proven at trial.

18 109. **Injunction.** Given that Defendants' conduct violated California Civil
19 Code section 1780, Plaintiff and members of the California Subclass are entitled to
20 seek, and do hereby seek, injunctive relief to put an end to Defendants' violations of
21 the CLRA. Plaintiff has no adequate remedy at law. Without equitable relief,
22 Defendants' unfair and deceptive practices will continue to harm Plaintiff and the
23 California Subclass.

24 **COUNT FOUR**

25 **Breach of Implied Warranty**

26 *(On Behalf of the Nationwide Class and California Subclass)*

27 110. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by
28 reference all allegations contained in this complaint, as though fully set forth herein.

1 **111. Nationwide Class & California Subclass.** Plaintiff brings this claim
 2 individually and on behalf of the Nationwide Class and California Subclass who
 3 purchased the Products within the applicable statute of limitations.

4 **112. Implied Warranty of Merchantability.** By advertising and selling the
 5 Products at issue, Defendants, merchants of goods, made promises and affirmations
 6 of fact that the Products are merchantable and conform to the promises or affirmations
 7 of fact made on the Products' packaging and labeling, and through its marketing and
 8 advertising, as described herein. This labeling and advertising, combined with the
 9 implied warranty of merchantability, constitute warranties that became part of the
 10 basis of the bargain between Plaintiff and members of the Class and Defendants—to
 11 wit, that the Products, among other things, are safe for consumption.

12 **113. Breach of Warranty.** Contrary to Defendants' warranties, the Products
 13 do not conform to the Products' representation of being safe for human consumption
 14 due to the inclusion of harmful heavy metals and, therefore, Defendant breached its
 15 warranties about the Products and their qualities.

16 **114. Causation/Remedies.** As a direct and proximate result of Defendants'
 17 breach of warranty, Plaintiff and members of the Class were harmed in the amount of
 18 the purchase price they paid for the Products. Further, Plaintiff and members of the
 19 Class have suffered and continue to suffer economic losses and other damages
 20 including, but not limited to, the amounts paid for the Products, and any interest that
 21 would have accrued on those monies, in an amount to be proven at trial. Accordingly,
 22 Plaintiff seeks a monetary award for breach of warranty in the form of damages,
 23 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the
 24 Class for said monies, as well as injunctive relief to enjoin Defendants' misconduct
 25 to prevent ongoing and future harm that will result.

26 **115. Punitive Damages.** Plaintiff seeks punitive damages pursuant to this
 27 cause of action for breach of warranty on behalf of Plaintiff and the Class.
 28 Defendants' unfair, fraudulent, and unlawful conduct described herein constitutes

malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Defendants' misconduct is malicious as Defendants acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendants willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendants were aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Defendants' misconduct is fraudulent as Defendants, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants.

COUNT FIVE

Unjust Enrichment/Restitution

(On Behalf of the Nationwide Class and California Subclass)

116. **Incorporation by Reference.** Plaintiff re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

117. **Nationwide Class & California Subclass.** Plaintiff brings this claim individually and on behalf of the Nationwide Class and California Subclass (together, the Class) who purchased the Products within the applicable statute of limitations.

118. **Plaintiff/Class Conferred a Benefit.** By purchasing the Products, Plaintiff and members of the Class conferred a benefit on Defendants in the form of the purchase price of the Products.

119. **Defendants' Knowledge of Conferred Benefit.** Defendants had knowledge of such benefit and Defendants appreciated the benefit because, were

1 consumers not to purchase the Products, Defendants would not generate revenue from
2 the sales of the Products.

3 **120. Defendants' Unjust Receipt Through Deception.** Defendants' knowing
4 acceptance and retention of the benefit is inequitable and unjust because the benefit
5 was obtained by Defendants' fraudulent, misleading, and deceptive omissions.

6 **121. Causation/Damages.** As a direct and proximate result of Defendants'
7 unjust enrichment, Plaintiff and members of the Class were harmed in the amount of
8 the purchase price they paid for the Products. Further, Plaintiff and members of the
9 Class have suffered and continue to suffer economic losses and other damages
10 including, but not limited to, the amounts paid for the Products, and any interest that
11 would have accrued on those monies, in an amount to be proven at trial. Accordingly,
12 Plaintiff seeks a monetary award for unjust enrichment in damages, restitution, and/or
13 disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies,
14 as well as injunctive relief to enjoin Defendants' misconduct to prevent ongoing and
15 future harm that will result.

16 **COUNT SIX**

17 **Negligent Failure to Warn**

18 ***(On Behalf of the Nationwide Class and California Subclass)***

19 **122. Incorporation by Reference.** Plaintiff re-alleges and incorporates by
20 reference all allegations contained in this complaint, as though fully set forth herein.

21 **123. Nationwide Class & California Subclass.** Plaintiff brings this claim
22 individually and on behalf of the Nationwide Class and California Subclass (together,
23 the Class) who purchased the Products without the applicable statute of limitations.

24 **124. Defendants' Manufactured Products.** At all relevant times, Defendants
25 were responsible for designing, constructing, testing, manufacturing, inspecting,
26 distributing, labeling, marketing, advertising, and/or selling the Products. At all
27 relevant times, it was reasonably foreseeable by Defendants that the consumption of
28 the Products, which contained heavy metals, lead and cadmium, involved serious

1 health risks and were unreasonably dangerous to Plaintiff and the Class as the ultimate
2 consumers of the Products.

3 125. **Knowledge.** Defendants knew, or through the exercise of reasonable
4 care, should have known of the presence of heavy metals in the Products and the
5 inherent dangers associated with consuming the Products as described herein, and
6 knew that Plaintiff and Class Members could not reasonably be aware of those serious
7 health risks. Defendants failed to exercise reasonable care in providing Plaintiff and
8 the Class with adequate warnings.

9 126. **Defendants Duty to Warn.** Defendants, as the designers, manufacturers,
10 testers, marketers, advertisers, and/or sellers of the Products, had a duty to warn
11 Plaintiff and the Class of the heavy metals contained in the Products and all health
12 risks associated with the consumption of the Products. At minimum, the duty arose
13 for Defendants to warn consumers that the consumption of the Products could result
14 in serious health risks and were unreasonably dangerous to consume.

15 127. **Negligent and Breach of Duty.** Defendants were negligent and breached
16 its duty to care by negligently failing to provide warnings to consumers of the
17 Products, including Plaintiff and the Class, regarding the true nature of the Products,
18 its serious health risks, and potential dangers. Defendants were negligent and
19 breached its duty to care by concealing the risks of and failing to warn consumers that
20 the Products contain harmful heavy metals.

21 128. **Causation.** Defendants' failure to provide adequate warnings about the
22 potential risks associated with the Products was a direct cause of Plaintiff's injuries.

23 129. **Damages.** As a direct and proximate result of Defendants' conduct,
24 Plaintiff and members of the Class were harmed in the amount of the purchase price
25 they paid for the Products. Further, Plaintiff and members of the Class have suffered
26 and continue to suffer economic losses and other damages including, but not limited
27 to, the amounts paid for the Products, and any interest that would have accrued on
28 those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks

1 damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff
 2 and the Class for said monies, as well as injunctive relief to enjoin Defendants'
 3 misconduct to prevent ongoing and future harm that will result.

4 **PRAYER FOR RELIEF**

5 130. WHEREFORE, Plaintiff, individually and on behalf of all others
 6 similarly situated, prays for judgment against Defendants as follows:

- 7 a. **Certification:** For an order certifying this action as a class
 8 action, appointing Plaintiff as the Class Representative, and
 9 appointing Plaintiff's Counsel as Class Counsel;
- 10 b. **Declaratory Relief:** For an order declaring that Defendants'
 11 conduct violates the statutes and laws referenced herein;
- 12 c. **Injunction:** For an order requiring Defendants to immediately
 13 cease and desist from selling the unlawful Products in violation
 14 of law; enjoining Defendants from continuing to market,
 15 advertise, distribute, and sell the Products in the unlawful manner
 16 described herein; requiring Defendants to engage in an
 17 affirmative advertising campaign to dispel the public
 18 misperception of the Products resulting from Defendants'
 19 unlawful conduct; and requiring all further and just corrective
 20 action, consistent with permissible law and pursuant to only
 21 those causes of action so permitted;
- 22 d. **Damages/Restitution/Disgorgement:** For an order awarding
 23 monetary compensation in the form of damages, restitution,
 24 and/or disgorgement to Plaintiff and the Class, consistent with
 25 permissible law and pursuant to only those causes of action so
 26 permitted;
- 27 e. **Punitive Damages/Penalties:** For an order awarding punitive
 28 damages, statutory penalties, and/or monetary fines, consistent

1 with permissible law and pursuant to only those causes of action
2 so permitted;

3 f. **Attorneys' Fees & Costs:** For an order awarding attorneys' fees
4 and costs, consistent with permissible law and pursuant to only
5 those causes of action so permitted;

6 g. **Pre/Post-Judgment Interest:** For an order awarding pre-
7 judgment and post-judgment interest, consistent with permissible
8 law and pursuant to only those causes of action so permitted; and

9 h. **All Just & Proper Relief:** For such other and further relief as
10 the Court deems just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a trial by jury on all issues and causes of action so
13 triable.
14

15 Dated: April 4, 2023

Respectfully submitted,

17 **CLARKSON LAW FIRM, P.C.**

By:

18 /s/ Bahar Sodaify

19 Ryan J. Clarkson, Esq.

20 Bahar Sodaify, Esq.

21 Alan Gudino, Esq.

22 Ryan D. Ardi, Esq.

23 *Attorneys for Plaintiff*